

105TH CONGRESS
1ST SESSION

S. 1379

To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 1997

Mr. DEWINE (for himself, Mr. MOYNIHAN, Mr. HATCH, Mr. D'AMATO, Mr. DODD, Mr. KOHL, Mr. COVERDELL, Mr. KENNEDY, Mr. INOUE, Mr. LEIBERMAN, Ms. SNOWE, Mr. HUTCHINSON, Mr. THURMOND, Mr. MCCAIN, Mr. SHELBY, Mr. CAMPBELL, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 552 of title 5, United States Code, and the National Security Act of 1947 to require disclosure under the Freedom of Information Act regarding certain persons, disclose Nazi war criminal records without impairing any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Nazi War Crimes Dis-
3 closure Act”.

4 **SEC. 2. REQUIREMENT OF DISCLOSURE UNDER FREEDOM**
5 **OF INFORMATION REGARDING PERSONS**
6 **WHO COMMITTED NAZI WAR CRIMES.**

7 (a) IN GENERAL.—Section 552 of title 5, United
8 States Code, is amended—

9 (1) in subsection (a)(4)(B) in the second sen-
10 tence, by inserting “or subsection (h)” after “sub-
11 section (b)”;

12 (2) by inserting after subsection (g) the follow-
13 ing:

14 “(h)(1) For the purposes of this subsection, the term
15 ‘Nazi war criminal records’ means records or portions of
16 records that—

17 “(A) pertain to any person as to whom the
18 United States Government, in its sole discretion, has
19 determined there exists reasonable grounds to be-
20 lieve that such person, during the period beginning
21 on March 23, 1933, and ending on May 8, 1945,
22 under the direction of, or in association with—

23 “(i) the Nazi government of Germany;

24 “(ii) any government in any area occupied
25 by the military forces of the Nazi government
26 of Germany;

1 “(iii) any government established with the
2 assistance or cooperation of the Nazi govern-
3 ment of Germany; or

4 “(iv) any government which was an ally of
5 the Nazi government of Germany,
6 ordered, incited, assisted, or otherwise participated
7 in the persecution of any person because of race, re-
8 ligion, national origin, or political opinion; or

9 “(B) pertain to any transaction as to which the
10 United States Government, in its sole discretion, has
11 determined there exists reasonable grounds to be-
12 lieve—

13 “(i) involved assets taken from persecuted
14 persons during the period beginning on March
15 23, 1933, and ending on May 8, 1945, by,
16 under the direction of, on behalf of, or under
17 authority granted by the Nazi government of
18 Germany or any nation then allied with that
19 government; and

20 “(ii) such transaction was completed with-
21 out the assent of the owners of those assets or
22 their heirs or assigns or other legitimate rep-
23 resentatives.

24 “(2)(A) Notwithstanding subsection (b), this sub-
25 section shall apply to Nazi war criminal records.

1 “(B) Subject to subparagraphs (C), (D), and (E),
2 Nazi war criminal records that are responsive to a request
3 for records made in accordance with subsection (a) shall
4 be released in their entirety.

5 “(C) An agency head may exempt from release under
6 subparagraph (B) specific information, the release of
7 which should be expected to—

8 “(i) constitute a clearly unwarranted invasion of
9 personal privacy;

10 “(ii) reveal the identity of a confidential human
11 source, or reveal information about the application
12 of an intelligence source or method, or reveal the
13 identity of a human intelligence source when the un-
14 authorized disclosure of that source would clearly
15 and demonstrably damage the national security in-
16 terests of the United States;

17 “(iii) reveal information that would assist in the
18 development or use of weapons of mass destruction;

19 “(iv) reveal information that would impair
20 United States cryptologic systems or activities;

21 “(v) reveal information that would impair the
22 application of state-of-the-art technology within a
23 United States weapon system;

24 “(vi) reveal actual United States military war
25 plans that remain in effect;

1 “(vii) reveal information that would seriously
2 and demonstrably impair relations between the Unit-
3 ed States and a foreign government, or seriously and
4 demonstrably undermine ongoing diplomatic activi-
5 ties of the United States;

6 “(viii) reveal information that would clearly and
7 demonstrably impair the current ability of United
8 States Government officials to protect the President,
9 Vice President, and other officials for whom protec-
10 tion services, in the interest of national security, are
11 authorized;

12 “(ix) reveal information that would seriously
13 and demonstrably impair current national security
14 emergency preparedness plans; or

15 “(x) violate a statute, treaty, or international
16 agreement.

17 “(D) In applying exemptions (ii) through (x) of sub-
18 paragraph (C), there shall be a presumption that the pub-
19 lic interest in the release of Nazi war criminal records out-
20 weighs the damage to national security that might reason-
21 ably be expected to result from disclosure. The agency
22 head, as an exercise of discretion, may rebut this presump-
23 tion with respect to a Nazi war criminal record, or portion
24 thereof, based on an exemption listed in subparagraph (C).
25 The exercise of this discretion shall be promptly reported

1 to the committees of Congress with appropriate jurisdic-
 2 tion.

3 “(E) This subsection shall not apply to records—

4 “(i) related to or supporting any active or inac-
 5 tive investigation, inquiry, or prosecution by the Of-
 6 fice of Special Investigations of the Department of
 7 Justice; or

8 “(ii) in the possession, custody or control of
 9 that office.”.

10 (b) INAPPLICABILITY OF NATIONAL SECURITY ACT
 11 OF 1947 EXEMPTION.—Section 701 of the National Secu-
 12 rity Act of 1947 (50 U.S.C. 431) is amended—

13 (1) by redesignating subsections (e) and (f) as
 14 subsections (f) and (g), respectively; and

15 (2) by inserting after subsection (d) the follow-
 16 ing:

17 “(e) Subsection (a) shall not apply to any operational
 18 file, or any portion of any operational file, that constitutes
 19 a Nazi war criminal record under section 552(h) of title
 20 5, United States Code.”.

21 **SEC. 3. INTERAGENCY INVENTORY OF NAZI WAR CRIMINAL**
 22 **RECORDS.**

23 (a) DEFINITIONS.—In this section the term—

24 (1) “agency” has the meaning given such term
 25 under section 551 of title 5, United States Code;

1 (2) “Interagency Group” means the Nazi War
2 Criminal Records Interagency Working Group estab-
3 lished under subsection (b);

4 (3) “Nazi war criminal records” has the mean-
5 ing given such term under section 552(h)(1) of title
6 5, United States Code (as added by section 2(a)(2)
7 of this Act); and

8 (4) “record” means a Nazi war criminal record.

9 (b) ESTABLISHMENT OF INTERAGENCY GROUP.—

10 (1) IN GENERAL.—Not later than 30 days after
11 the date of enactment of this Act, the President
12 shall establish the Nazi War Criminal Records Inter-
13 agency Working Group.

14 (2) MEMBERSHIP.—The President shall appoint
15 to the Interagency Group the heads of agencies who
16 the President determines will most completely and
17 effectively carry out the functions of the Interagency
18 Group within the time limitations provided in this
19 section. The head of an agency appointed by the
20 President may designate an appropriate officer to
21 serve on the Interagency Group in lieu of the head
22 of such agency.

23 (3) INITIAL MEETING.—Not later than 90 days
24 after the date of enactment of this Act, the Inter-

1 agency Group shall hold an initial meeting and begin
2 the functions required under this section.

3 (c) FUNCTIONS.—Not later than 1 year after the date
4 of enactment of this Act, the Interagency Group shall, to
5 the greatest extent possible consistent with section
6 552(h)(2) of title 5, United States Code (as added by sec-
7 tion 2(a)(2) of this Act)—

8 (1) locate, identify, inventory, recommend for
9 declassification, and make available to the public at
10 the National Archives and Records Administration,
11 all Nazi war criminal records of the United States;

12 (2) coordinate with agencies and take such ac-
13 tions as necessary to expedite the release of such
14 records to the public; and

15 (3) submit a report to Congress describing all
16 such records, the disposition of such records, and
17 the activities of the Interagency Group and agencies
18 under this section.

19 **SEC. 4. EXPEDITED PROCESSING OF REQUESTS FOR NAZI**
20 **WAR CRIMINAL RECORDS.**

21 (a) DEFINITIONS.—In this section, the term—

22 (1) “Nazi war criminal record” has the mean-
23 ing given the term under section 552(h)(1) of title
24 5, United States Code (as added by section 2(a)(2)
25 of this Act); and

1 (2) “requester” means any person who was per-
2 secuted in the manner described under section
3 552(h)(1)(A) of title 5, United States Code (as
4 added by section 2(a)(2) of this Act), who requests
5 a Nazi war criminal record.

6 (b) EXPEDITED PROCESSING.—For purposes of expe-
7 dited processing under section 552(a)(6)(E) of title 5,
8 United States Code, any requester of a Nazi war criminal
9 record shall be deemed to have a compelling need for such
10 record.

11 **SEC. 5. EFFECTIVE DATE.**

12 The amendments made by this Act shall apply to re-
13 quests under section 552 of title 5, United States Code
14 (known as Freedom of Information Act requests) received
15 by an agency after the expiration of the 90-day period be-
16 ginning on the date of enactment of this Act.

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